Sand, Gravel & Crushed Stone Workers Union, Local No. 681, affiliated with the Laborer's International Union of North America, AFL-CIO *and* **Elmhurst-Chicago Stone Company and International Union of Operating Engineers, Local 150, AFL-CIO.** Case 13-CD-310

September 10, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Elmhurst-Chicago Stone Company, herein called the Employer, alleging that Sand, Gravel & Crushed Stone Workers Union, Local No. 681, affiliated with the Laborer's International Union of North America, AFL-CIO, herein referred to as the Laborers Union, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by International Union of Operating Engineers, Local 150, AFL-CIO, herein referred to as the Operating Engineers.

Pursuant to notice a hearing was held before Hearing Officer Wanda L. Moses on March 22, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated that Elmhurst-Chicago Stone Company is a Delaware corporation engaged in the business of operating mines for the production of limestone. During the past calendar year, a representative period, Elmhurst-Chicago Stone Company derived gross revenues in excess of $25 million. During the past calendar year, Elmhurst-Chicago Stone Company in the course and conduct of its business operations sold and shipped from its Elmhurst, Illinois, facility products, goods, and materials valued in excess of $50,000 directly to enterprises located in the State of Illinois which themselves are engaged in interstate commerce. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated and we find that Sand, Gravel & Crushed Stone Workers Union, Local No. 681, affiliated with the Laborer's International Union of North America, AFL-CIO, and International Union of Operating Engineers, Local 150, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The record shows that the Employer is a Delaware corporation engaged in the business of mining sand, gravel, and limestone at eight separate locations in the State of Illinois. The instant dispute includes only operations of the Employer carried on at Barber's Corner, Will County, Illinois. Here, the Employer employs employees who are members of the Operating Engineers to operate various pieces of mobile equipment, including, *inter alia*, cranes, bulldozers, scrapers, front-end loaders, cherry pickers, and tractors. At the same location, employees who are members of the Laborers Union operate plant machinery, including crushers, conveyors, and screens. When operating at normal capacity in the past, the Employer has employed 8 members of the Operating Engineers to operate the mobile outplant equipment, and 13 members of the Laborers Union to handle the in-plant operations. The Employer has had collective-bargaining agreements with both Unions for approximately 20 years.

Since November 1981, the duties involving in-shop maintenance and repair of the mobile outplant machines have been performed by employees who are members of the Laborers Union. In early December 1981, business agents for the Operating Engineers expressed concern to the newly appointed main superintendent about this assignment, and pointed out that it had not been done this way in the past, in that the mobile machinery operators had performed their own maintenance and repairs on their equipment. Subsequently on or about December 30, 1981, a business agent for the Operating Engineers filed a grievance with the Employer, alleging that the Employer had laid off members of the Operating Engineers and assigned their repair work to other employees, which by past practice was the work of the Operating Engineers. On Jan-

uary 8, 1982, the Employer's counsel wrote the Operating Engineers denying the grievance. In early February 1982, the Employer's attorney told the business agent for the Laborers Union that there was dispute with the Operating Engineers, which was claiming work done by employees represented by the Laborers Union, to which the business agent responded that, if the work was reassigned to operating engineers, the Laborers Union would have no choice but to picket the Employer. The business agent for the Laborers Union also requested, and subsequently received, the grievance previously filed by the Operating Engineers. On February 25 or 26, 1982, the business agent for the Laborers Union again reiterated to the Company's attorney his threat to picket the Employer should the reassignment take place, and emphasized his position by letter dated February 25, 1982. The Employer on March 2, 1982, thereupon filed the charge herein.

B. *The Work in Dispute*

The Laborers Union and the Employer stipulated that the work in dispute involved the in-shop maintenance and repair of the heavy mobile machinery. The Operating Engineers would not stipulate as to the work in dispute. The record shows that the specific work in dispute involves the maintenance and repair by employees who are members of the Laborers Union in the shop of the heavy mobile machinery which is operated outside the shop by employees who are members of the Operating Engineers.

C. *The Positions of the Parties*

The Employer contends that members of the Laborers Union by past practice operate and maintain the plant equipment, including the maintenance of the heavy mobile machinery operated by members of the Operating Engineers, and that the provisions of its collective-bargaining agreement with the Laborers Union support this assignment.

The Laborers Union contends that the jurisdictional language of its collective-bargaining agreement with the Employer, as well as its skills, efficiency, and Employer preference and past practice entitles it to the assignment.

The Operating Engineers insists that past practice of the Employer, skills, job impact, and area practice, as well as language in its collective-bargaining agreement with the Employer, indicate that employees who are members of that Union are entitled to perform the maintenance and repair of the heavy mobile equipment.

All parties agree that the maintenance and repair of in-plant machinery operated and maintained by employees represented by the Laborers continues to be within the Laborers jurisdiction.

D. *Applicability of the Statute*

The parties stipulated that there was no voluntary method of adjustment of the dispute.

It is clear that the Laborers Union threatened economic action, including the picketing of the Employer, to protect its claim to the disputed work, and on February 25 or 26, 1982, reiterated to the Employer its intention by letter dated February 25, 1982.

Based on the foregoing, and the record as a whole, we find that the parties have not agreed upon a method for the voluntary adjustment of the dispute, and that there is reasonable cause to believe that an object of the action of the Laborers Union was to force the Employer to continue to assign the disputed work to employees represented by the Laborers Union, and that a violation of Section 8(b)(4)(D) has occurred.

Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.[1] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[2]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

Article I of the labor agreement between the Employer and Operating Engineers Local 150, known as the Northern Illinois Materials Producers' Association Agreement, states in part: ". . . As a matter of jurisdiction, all work that has been performed by custom or by practice, by employees of a Company within this particular industry shall continue to be so performed." Article VI, section 1, of said agreement, in dealing with hourly rate schedules, states: "It is understood that there are classifications not listed above . . . which by custom, practice or agreement with the Company involved . . . are in the work jurisdiction of the bargaining unit." And article IX, section 10, deal-

[1] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[2] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

ing with "Repairs" provides: "Employees shall keep their equipment in good order and repair at all times and assist in field repair of same . . . . Engineers shall receive their regular rate of pay when assigned to repair work."

Appendix A to the agreement between the Northern Illinois Material Producers' Association and the Laborers Union, Local 681, contains a classification with wage rates for "Semi-Skilled Laborer, Skilled labor helpers (except skilled repairmen helpers)"; and "Skilled Labor (skilled repairmen)." Thus, although neither contract specifically mentions repair of heavy machinery in the shop, the Operating Engineers agreement does contain provisions relating to jurisdiction of work performed by custom or practice by operating engineers, and further requires that the operators shall keep their equipment in good order and repair at all times. Past practice or custom regarding repairs on the heavy machinery operated by them is discussed in the appropriate section, *infra*.

While the Laborers Union contract sets forth classifications together with wage rates for "repairmen," such classifications could easily refer to repair work done on in-plant machinery, operated and maintained by employees who are members of the Laborers Union.

Accordingly, we find that the factor of the collective-bargaining contracts favors an assignment to employees represented by the Operating Engineers.

2. Past company and industry practices

The record shows that, prior to November 1981, the work in question was performed for over 20 years by employees represented by the Operating Engineers. Pursuant to this practice, employees who were members of that Union repaired the heavy equipment both in the field and, when that was impractical due to inclement weather or the nature of the work to be done, in the company shop. The laborers repaired, in similar fashion, the machinery in the plant which employees who were members of the Laborers Union traditionally kept in working order.

It is also noted that the contract between the Operating Engineers, Local 150, and the Employer guarantees a 40-hour work week in article VII, section 4.

In November 1981, the Employer began assigning employees represented by the Laborers Union to perform the repair work in the shop on the heavy mobile machines, although the Employer continued to expect employees represented by the Operating Engineers to perform the repairs if necessary to complete their guaranteed 40-hour week.[3] Subsequently, on December 18, 1981, the Employer laid off all but one operating engineer; and during the winter of 1980–81, only one was employed, whereas the previous winter four to six had been employed.

Regarding industry practice, the record shows that eight companies operating in the northern Illinois area, and parties to the Northern Illinois Material Producers' Association Agreement, assign employees represented by the Operating Engineers to repair the equipment they operate. Accordingly, we find, that the factors of past Employer practice and area practice favor an award of the disputed work to the employees who are members of the Operating Engineers.

3. Relative skills

The record shows that for over 20 years, prior to November 1981, employees represented by the Operating Engineers repaired their own machinery, except for some 4 years when the Employer had a full-time mechanic[4] who was charged with the responsibility of performing all repairs. Until November 1981, employees represented by the Laborers Union would assist in the repair function of heavy machinery when requested. Since November 1981, the Employer has one laborer trained for shop repair work on the mobile machines, and is in the process of training another for the same purpose. It is clear, however, that employees represented by the Operating Engineers, in addition to actually operating the machines themselves and thus being familiar with them, possess far more experience with the mobile machinery and its repair. Accordingly, we find that the factors of relative skills and experience favor an award of the work to employees represented by the Operating Engineers.

4. Job impact

The record makes clear the impact which the reassignment of repair work by the Employer has had on employees represented by the Operating Engineers. The employee complement last winter was reduced from four or five to one; and many remained on layoff status as of the date of the instant hearing. On the other hand, the record is devoid of any evidence indicating that the Laborers Union would experience any adverse job impact if the work was assigned to employees represented by the Operating Engineers. Accordingly,

[3] To this extent, therefore, the Employer expected employees represented by the Operating Engineers to perform needed repairs on their machinery.

[4] Such employee was a member of the Operating Engineers, Local 150.

the factor of job impact favors an award of the work to members of the Operating Engineers.

5. Employer preference

The Employer at the hearing testified that it preferred an award of the work to members of the Laborers Union. This preference is not without qualification, however, since the Employer assigns employees represented by the Operating Engineers to do repair work in order to complete the guaranteed 40-hour week, when there is not an available machine to operate. Thus, the Employer wishes to assign repair duties to employees represented by either the Laborers Union or the Operating Engineers as its economic considerations dictate. Accordingly, we find that the factor of employer preference does not favor an award to either group.

6. Economy and efficiency

The Employer contends that it is more economical for laborers to perform the disputed work, in that they receive lower wage rates than operating engineers. The Board, however, does not consider wage differentials to be a proper basis for awarding disputed work.[5] Accordingly, we find that this factor favors neither party.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by International Union of Operating Engineers, Local 150, AFL-CIO, are entitled to perform the work in dispute based on the collective-bargaining agreements, past company and area practices, relative skills, and job impact. In making this determination, we are awarding the work in dispute to employees who are represented by International Union of Operating Engineers, Local 150, AFL-CIO, but not to that Union or its members. This determination is limited to the particular controversy which gave rise to this dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees of Elmhurst-Chicago Stone Company who are currently represented by International Union of Operating Engineers, Local 150, AFL-CIO, are entitled to perform the maintenance and repair work in the maintenance shop of the Employer's heavy mobile machinery, which is operated by such employees, at the Employer's facility located at Barber's Corner, Royce Road, Will County, Illinois.

2. Sand, Gravel & Crushed Stone Workers Union, Local No. 681, affiliated with the Laborer's International Union of North America, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Elmhurst-Chicago Stone Company to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Sand, Gravel & Crushed Stone Workers Union, Local No. 681, affiliated with the Laborer's International Union of North America, AFL-CIO, shall notify the Regional Director for Region 13, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.

[5] *Theatrical Protective Union No. One, I.A.T.S.E., AFL-CIO*, 249 NLRB 1090 (1980).